adopted in a previous case while Oklahoma was a territory. *Mass* v. *Territory,* 10 Okl. 714, 63 Pac. 960.

INTOXICATING LIQUORS—ILLEGAL SALE—"DISPENSING."—§ 2382 Iowa Code provides, "No person by himself * * * or employee * * * shall * * * manufacture, sell, exchange, barter or dispense * * * or keep for sale any intoxicating liquors." In § 2384 it is declared that whoever shall maintain any building or place for any of the purposes prohibited in § 2382 shall be guilty of nuisance. Defendant conducted a restaurant, and, upon request by his patrons and with money provided by them, his employees, acting upon his instructions, would procure liquor from a neighboring licensed saloon and serve it in the restaurant to the patrons who had ordered it. Defendant had no interest in the sale, and derived no profit therefrom other than that which a possible increase in patronage might produce. *Held,* that conducting such a place was within the purview of the statutory prohibition as to "dispensing"; that it was a nuisance and should be abated. *Sawyer* v. *Frank* (Iowa 1911) 131 N. W. 761. Petition for rehearing denied. 132 N. W. 861.

There is a dearth of judicial construction of the word "dispense" as used in the Iowa statute, but similar prohibitory enactments have received consideration in many of the American courts; there is much conflict in the resulting adjudications. Convictions for illegal sale cannot be sustained by proof that defendant, at the request of and with money furnished by a third person, purchased liquor for and delivered it to the latter. *Bonds* v. *State,* 130 Ala. 117; *People* v. *Converse,* 157 Mich. 29; *Tate* v. *State,* 91 Miss. 382. But if the statute prohibited "furnishing" defendant is guilty under such a state of facts as above. *State* v. *Best,* 108 N. C. 747. And under a charge of "selling or dispensing" intoxicating liquors in violation of an ordinance it has been held that the giving away of whisky constituted a "dispensing." *Johnson* v. *Chattanooga,* 97 Tenn. 247. Numerous decisions support the general proposition laid down in *Bonds* v. *State, supra,* on the theory that if the person who does the actual purchasing is the agent of the buyer and derives no benefit from the transaction, he is not guilty within the terms of the common prohibitory statute. *Whitmore* v. *State,* 72 Ark. 14; *Roberson* v. *State,* 100 Ala. 37; *Davis* v. *State,* 53 Tex. Cr. 373; *Skidmore* v. *Commonwealth* (Ky.) 57 S. W. 468; *Wood* v. *Territory,* 1 Ore. 223; *Reed* v. *State,* (Okla. Crim. App.), 103 Pac. 1070. And it is held in one case that even where the defendant charged a small fee for procuring liquor, this is not evidence of a sale. The majority of the court in the principal case endeavor to distinguish it from the latter decisions on the ground that they are prosecutions for one act of infringement, while in the principal case the maintenance of a place where liquor may be had is the gist of the offense and constitutes the "dispensing." The court draws support for its theory from the cases which hold that the furnishing of liquor to members of social clubs is within the prohibitory statute. *State* v. *Easton etc. Social Club,* 73 Md. 97; *State* v. *Lockyear,* 95 N. C. 633; *Newark* v. *Essex Club,* 53 N. J. L. 99. The English courts have pronounced a rule in accord with that in the principal case. *Pasquier* v. *Neale* [1902] 2 K. B. 287. In the latter case a restaurant keeper was held

guilty on a similar state of facts. A strong dissenting opinion in the instant case contends for the application of the rule in *Bonds* v. *State, supra.* The Judge says, "If it once be admitted that one may act as agent for a purchaser in buying liquor, he having no interest whatever and receiving no benefit from the owner of the goods, it cannot be that his act is unlawful because he delivers it to the purchaser at any specific place." This view is supported in *People* v. *Journeau,* 147 Mich. 520, 111 N. W. 95, where the court held it a question for the jury whether a restaurant keeper who obtained liquor at a nearby saloon with money given her by a customer, receiving no profit from the transaction, was guilty of conduct indicative of intent to evade the prohibitory statute.

JUDGMENT—COLLATERAL ATTACK—DEFECTIVE AFFIDAVIT.—X obtained a void tax-deed to lands belonging to Y, and later obtained a decree quieting title in himself in said lands. In the suit to quiet title, service on Y (a non-resident) was made by publication, but the affidavit filed for the purpose of obtaining the court's order for substituted service was defective. In Y's suit to remove the cloud on its title made by X's decree, *held,* that the defect in the affidavit upon which such publication was based is jurisdictional and renders the judgment subject to collateral attack. *Empire Ranch & Cattle Co.* v. *Coldren* (Colo. 1911) 117 Pac. 1005.

The statute under which the affidavit was filed, MILLS ANNOTATED CODE, § 41, provides, "The plaintiff or one of the plaintiffs may file in the office of the proper clerk an affidavit stating that the defendant resides out of the State, or has departed from the State, or concealed himself to avoid service of process, and giving his post office address if known to the affiant, whereupon the order of publication shall be made." There are similar statutes providing for service by publication in nearly every jurisdiction, and the decisions under them are in hopeless conflict. VANFLEET, COLLATERAL ATTACK, §§ 330-340. Among the cases holding that a defect in the affidavit is not jurisdictional, and that the judgment is therefore not subject to collateral attack, are: *Cooper* v. *Reynolds,* 10 Wall. 308; *Matthews* v. *Densmore,* 109 U. S. 216; *Burnett* v. *McCluey,* 92 Mo. 230; *Russell* v. *Work,* 35 N. J. L. 316; *Clay* v. *Bilby,* 72 Ark. 101, 78 S. W. 749; *Scott* v. *Kirschbaum,* 47 Neb. 331, 66 N. W. 443; *Shea* v. *Johnson,* 101 Cal. 455 (Reported as *Shea* v. *Robinson,* 35 Pac. 1023); *Morris* v. *Robbins,* 83 Kan. 335, 111 Pac. 470. In all, decisions in twenty-one courts have been found supporting the rule that such defects are not jurisdictional. Decisions have been found in nine courts supporting the rule as given in the present case. The leading case on this side of the controversy is *Greenvault* v. *Farmers and Mechanics' Bank,* 2 Doug. 498. See also *Heard* v. *National Bank,* 114 Ga. 291, 40 S. E. 266; and *Lutkens* v. *Young* (Wash. 1911) 115 Pac. 1038. In commenting on this question Mr. VAN FLEET says, "No court has ever yet assigned any reasons why a failure to comply with the letter of the statute on a preliminary matter that cannot possibly affect the rights of the defendant, should make the proceeding void, and none occurs to me." VANFLEET, COLLATERAL ATTACK, p. 312. The real reason for decisions holding these defects judisdictional is that in the particu-